

From: [Sweeney, Stephen](#)
To: [Shapiro, Mike](#); [Forsgren, Lee](#); [Pirzadeh, Michelle](#); [Greenwalt, Sarah](#); [Opalski, Dan](#); [Lidgard, Michael](#); [Stern, Allyn](#); [Best-Wong, Benita](#); [Wall, Tom](#); [Goodin, John](#); [Nagle, Deborah](#); [Hisel-McCoy, Sara](#); [Havard, James](#); [Monschein, Eric](#); [Lewicki, Chris](#); [Woodruff, Leigh](#); [Croxtton, Dave](#); [Behl, Betsy](#); [Sawyers, Andrew](#); [Werntz, James](#); [Nadeau, Tracie](#)
Cc: [Fotouhi, David](#); [Neugeboren, Steven](#); [Schroer, Lee](#); [Steiner-Riley, Cara](#); [Byrne, Jennifer](#); [Curtin, James](#); [Glazer, Thomas](#)
Subject: new complaint alleging unreasonable delay in responding to administrative petition for revision of TMDL -- Idaho Conservation League v. Pruitt (D. Idaho, Nov. 16, 2017)
Date: Monday, November 27, 2017 11:26:00 AM
Attachments: [Hells Canyon nutrients petition Complaint.pdf](#)
[March 9 2015 petition.pdf](#)

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The Idaho Conservation League (ICL) has filed a complaint (attached) against EPA in U.S. District Court for Idaho alleging that EPA has unlawfully withheld or unreasonably delayed responding to ICL's March 2015 administrative petition requesting that EPA review, disapprove, and revise a TMDL for nutrients developed by the states of Idaho and Oregon for the Hells Canyon reach of the Lower Snake ("Hells Canyon TMDL") that EPA approved in 2004. Idaho Conservation League v. Pruitt, No. 1:17-cv-472 (D. Idaho). Also attached is ICL's administrative petition.

The TMDL sets a "total load" target is 0.07 mg/L of total phosphorus during the months of May through September. ICL's complaint refers to the TMDL as a "phased" TMDL using information available in 2003 and that the TMDL "was intended to be revised in the future as new information becomes available." Complaint at para. 45. ICL's complaint also states that Idaho and Oregon intended to review the TMDL at least every five years. Complaint at para. 48.

ICL alleges that a 2011 U.S. Geological Survey (USGS) study demonstrates that the TMDL target is inadequate and that a lower and/or year-round total phosphorus target is needed. Complaint at para. 50 & 52. ICL notes that Idaho itself issued health advisories and "closed down" areas in the Hells Canyon reach due to harmful algal blooms in 2016 and again in 2017. Complaint at para. 4. The 2011 USGS study allegedly describes high levels of chlorophyll-a at different locations in the river system at various times of the year, and also identifies increases in mercury concentrations in fish tissue in the Hells Canyon reach of the Snake River. ICL alleges that nutrient pollution exacerbates mercury problems in the Hells Canyon, specifically that it creates conditions that facilitate the conversion of inorganic mercury in Hells Canyon to organic methylmercury, which ICL alleges is much more harmful, and can be more easily absorbed by fish and passed up the food chain (including based on data indicating that mercury fish tissue concentrations are five times higher in Hells Canyon than in fish further upstream). ICL cites to Idaho's issuance of human health advisories warning people not to eat fish caught in Hells Canyon. Complaint at para. 5.

The complaint argues that EPA's two-and-a-half-year delay in responding to their administrative petition constitutes agency action unlawfully withheld or unreasonably delayed under the Administrative Procedure Act section 706(1). ICL seeks a court order directing EPA to respond to their administrative petition within 30 days of the court's order and, as well as an award of attorney fees and costs.

For further information, please contact Stephen Sweeney at (202) 564-5491 (OGC) or Jennifer Byrne at (503) 326-5872 (ORC, Region 10).